

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

**IN THE MATTER OF: Jon W. Currivan
 Petitioner**

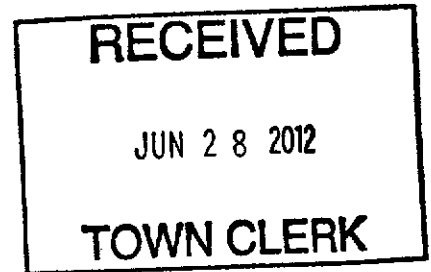
**PROPERTY OWNER: Jon W. Currivan
 36 Ellis St.
 Medway, MA 02053**

OPINION OF THE BOARD

**REQUEST FOR SPECIAL PERMIT and VARIANCE
 1 High Street**

**Hearing: March 21, 2012
Decision: March 21, 2012**

**MEMBERS PRESENT: Joseph Musmanno, Chairman
 David Cole, Clerk
 Anthony Biocchi
 Arlene Doherty**



July 17, 2012

THE WRITTEN OPINION WAS DELIVERED ON JUNE 8, 2012

OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning By-Laws of the Town of Medway, MA, 02053 and the Massachusetts General Law Chapter 40A, as amended, in which the petitioner, Jon W. Currivan, requests a Special Permit V.D.4(a) and Variance V.J.2, V.J.3(a)(d)(e) to rebuild currently existing structure by moving structure away from High Street and Village Street to make the structure less nonconforming. Premises are located at 1 High Street, Medway, MA 02053

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on March 7 and 14, 2012. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11.

The Public Hearing was held and the record closed on March 21, 2012. At the hearing, two members of the public spoke in favor of, no one spoke in opposition to the application.

Hearing Summary

The Applicant, Jon W. Currivan, represented by attorney, Stephen J. Kenney, came before the board to request a Special Permit V.D.4(a) and Variance V.J.2, V.J.3(a)(d)(e) to remove the present structure and rebuild a proposed two family unit. In testimony, Mr. Kenney noted that the subject lot, 1 High St., was in Zoning District C-IV, although it may straddle into AR-II. The Applicant is seeking to rebuild a building already condemned by the Zoning Enforcement Officer, basically on the same footprint with parking for four vehicles as required by the Zoning ByLaw. The condemned mixed use building housed a business and a residential unit and will razed. It is proposed that the newly constructed building be moved back from the corner of High and Village Streets. Further, a two family use would be more conforming to the neighborhood, which is largely residential, than the previous mixed residential/commercial use. The shape of the subject lot is odd, abutting both High and Village Streets. Because of the shape of the lot and the buildings on adjacent lots, moving the proposed building to the center of the lot would tend to crowd abutting lots. The hardship of rebuilding on the existing footprint would leave the building too close to the street. Mr. Currivan has owned the lot since 1964. Mr. Kenney concluded that the suggested relief would not derogate from the intent of the Zoning ByLaw as it would improve the aesthetics of the subject lot and be a benefit for the neighborhood.

When asked for further explanation of the justification for a two family dwelling, Mr. Kenney argued that a two family dwelling would be better suited for the

neighborhood than a mixed use. The Board pointed out that the C-IV Zoning ByLaw section in question, V.J.2, stated only single family dwellings shall be erected in the district and that expresses the intent of the town.

Board members expressed difficulty in the proposed two family dwellings in view of the specific provision in the By-Law regarding only single family residences be erected. Mr. Kenney argued that there are already two units on the lot, one commercial and one residential. Mr. Kenney indicated that a commercial use would be difficult given the location and most probably an on-street parking situation.

Findings:

Note: This decision is based on the plan received by this Board dated 9 February 2012.

1. The shape and size of subject lot do not support construction of typical structure within the established setbacks. By vote of 4-0
2. The aforementioned circumstance cause substantial hardship in that construction of a dwelling or other typical structure would be effectively impossible within strict application of the Zoning By-Law. By vote of 4-0
3. The grant of suitable setback relief would not derogate from the intent of the Zoning ByLaw. By vote of 4-0

Relief Granted

By vote of 4-0: Grant relief by varying the requirements of Section V.J.3(a) of the Zoning ByLaw to 9,958 sq. ft. more or less and the requirements of Section V.J.3(d) to 20 feet and the requirements of Section V.J.3(e) to 10 feet.

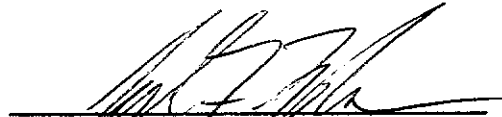
Relief Denied

Subsequent to the above granting of area and setback relief, motions were made to allow either by Variance or Special Permit construction of a two family dwelling on the subject lot. All motions failed, and the matter was tabled.

The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by

reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

**IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW,
CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL PERMIT
OR CONSTRUCTIVE GRANT OF A VARIANCE TAKES EFFECT
UNTIL RECORDED IN THE REGISTRY OF DEEDS.**



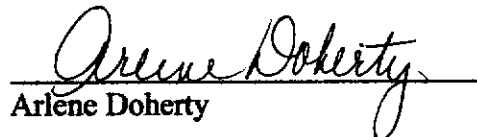
Joseph F. Musmanno, Chairman



David Cole



Anthony Biocchi



Arlene Doherty